

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a)1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28, effective July 1, 2012.

b. A person discharging to a POTW as established in 40 C.F.R. 122.3, effective July 1, 2012 unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2012.

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m), effective July 1, 2012.

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44(k), effective July 1, 2012.

(b) An applicant shall submit the appropriate application form, as established in Table 1 of this paragraph.

TABLE 1	
Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural dis-	1 and C

charges with process water	
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21, effective July 1, 2012 and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits.

(a) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application; and
2. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

(b) Effect. A permit continued pursuant to this subsection shall remain fully effective and enforceable until the effective date of a new permit.

(c) Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet shall do the following:

1. Initiate enforcement action based upon the permit that has been continued;
2. Issue a notice of intent to deny the new permit pursuant to 401 KAR 5:075, Section 3;
3. Issue a new permit pursuant to 401 KAR 5:075 with appropriate conditions to ensure that the permit is protective of water quality; or
4. Take action authorized by KRS 224 and 401 KAR Chapter 5.

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of a legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender a legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22, effective July 1, 2012.

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23, effective July 1, 2012.

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23(h) and 40 C.F.R. 122.28 is not a cause for permit modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62, effective July 1, 2012.

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6), effective July 1, 2012, shall be a minor modification as established in 40 C.F.R. 122.63, effective July 1, 2012.

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic ani-

mal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24, effective July 1, 2012.

Section 7. Aquaculture Projects. A discharge into an aquaculture project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25, effective July 1, 2012.

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26, effective July 1, 2012.

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27, effective July 1, 2012.

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30, effective July 1, 2012.

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32, effective July 1, 2012.

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33, effective July 1, 2012.

(4) The permit for a small MS4 shall contain conditions consistent with the requirements established in 40 C.F.R. 122.34, effective July 1, 2012.

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35, effective July 1, 2012.

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21, effective July 1, 2012.

(5) The conditions for Cooling Water Phase II established in 40 C.F.R. 122.21(r)(1)(ii) shall be modified to remove the references to 40 C.F.R. 125.95, effective July 1, 2012.

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C.F.R. 122.21(m)(6) shall be modified to 40 C.F.R. 124.62, effective July 1, 2012.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) KPDES Form 1, DEP 7032, February 2009;
- (b) KPDES Form A, DEP 7032A, February 2009;
- (c) KPDES Form B, DEP 7032B, February 2009;
- (d) KPDES Form C, DEP 7032C, February 2009;

- (e) KPDES Form SC, DEP 7032SC, February 2009;
- (f) KPDES Form F, DEP 7032F, February 2009;
- (g) KPDES Form NE, DEP 7032NE, February 2009; and
- (h) KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (9 Ky.R. 858; Am. 1119; 10 Ky.R. 25; eff. 6-1-83; 11 Ky.R. 756; eff. 1-7-85; 12 Ky.R. 528; eff. 12-10-85; 20 Ky.R. 3246; 21 Ky.R. 396; eff. 8-24-94; 28 Ky.R. 2686; 29 Ky.R. 1053; 1566; eff. 12-18-02; TAm eff. 8-9-2007; 35 Ky.R. 2526; eff. 9-25-2009; 39 Ky.R. 268; 992; eff. 3-8-2013; TAm eff. 7-8-2016.)